

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTON

WRIT PETITION NO.7440 OF 2006

Matunga Book Depot & Another .. Petitioners.

Versus

Special Director & Others .. Respondents.

Mr.S.P. Kanuga i/by Ms.Sapna N. Nath for the petitioners.

Mr.P.S. Jetly for the respondents.

CORAM : F.I. REBELLO &
D.B. BHOSALE, JJ.

DATED : 17TH AUGUST, 2007.

P.C. :

1. Rule. Heard forthwith.

2. The facts need not be set out. On 13-08-2001 in Appeal Nos.228/01 and 229/01 on an application moved by the petitioner herein, the learned Tribunal was pleased to dispense with the requirement of pre-deposit and ordered that the appeal be heard on merits. Accordingly, the learned counsel submits that the matter was heard. It appears that no orders were passed.

3. On 12-7-2006 in Appeal No.228/01 further order came to be passed observing that at that stage the Tribunal was considering the question of

dispensation of making pre-deposit of the penalty amount. The petitioner, thereafter moved an application to point out that an order had already been passed of dispensing with pre-deposit. The learned Tribunal on 28-09-2006 in Appeal No.228/01 despite the fact that this fact was brought to their attention again observed that the question of pre-deposit would be taken up afresh. It is these orders which are subject matter of present petition.

4. Once the Tribunal applied its mind and passed an order dispensing with the pre-deposit, question of recalling the order suo-motto would not arise unless it was the respondents, if entitled to in law, who could have moved against the said order, which is not the case. In that light, in our opinion, the Tribunal without recalling its earlier order was not entitled to proceed again to hear the question of pre-deposit. The order is without jurisdiction and consequently the order dated 12-7-06 and 28-9-2006 are liable to be quashed and set aside.

5. Considering the above, we direct the Tribunal to dispose of the appeal on merits. Petition is accordingly made absolute in terms of this order. There shall be no order as to costs.

(D.B. BHOSALE, J.) (F.I. REBELLO, J.)